

PITTSBURGH POST-GAZETTE  
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## Cig Defense Asks Ouster Of Testimony

### Not Up to State Law Standard, Trial Judge Told

A motion to have a major part of medical testimony stricken from the record as incompetent in a \$1,250,000 lung cancer suit against the Liggett & Myers Tobacco Company was made by the defense in Federal Court here late yesterday afternoon.

Attorney Earl Reed, of the defendant company's counsel, argued before Judge John L. Miller that each of the specialists who gave an opinion of the cause of Otto E. Pritchard's lung cancer based his opinion on statistics.

#### More Than Probabilities

"Such testimony," Mr. Reed contended, "falls below the standard of Pennsylvania law, which requires more than probabilities as causes."

With testimony for the plaintiff finished on the sixth day of the trial, Mr. Reed cited what he called a "conflict" among Mr. Pritchard's witnesses as to whether statistics can be applied to a given case.

"There is not enough causation evidence here to justify taking the case to the jury," Mr. Reed said.

He argued the motion after Judge Miller had dismissed the jury for the day.

#### Based on Statistics

"Anybody who is a smoker and has a lung cancer has a case against a tobacco company based on statistics," Mr. Reed emphasized in asking the court to eliminate the medical testimony.

It was evident that, short of asking for a directed verdict of acquittal, the defense was seeking to so undermine

the plaintiff's testimony as to leave Mr. Pritchard's attorney, James P. McArdle, without a case.

Refusing the defense claim of conflict, Mr. McArdle reviewed his witnesses' testimony in behalf of Mr. Pritchard, the 61-year-old Brookline carpenter who claims that some 25 years of heavy smoking (mostly Chesterfields) caused "epidermoid carcinoma"—cancer.

#### Had Lung Removed

Mr. Pritchard's right lung was removed by a Pittsburgh surgeon at Presbyterian Hospital in 1953.

It had been established, Mr. McArdle contended, that Mr. Pritchard's epidermoid cancer attracted the attention of five specialists, who agreed, the attorney said, that this type of lung cancer is the result of heavy smoking.

Judge Miller reserved decision on the defense motion until court convenes again this morning.

Until the defense made its late move to shorten the trial, Mr. Reed and Frederick P. Haas, also of Liggett & Myers' legal staff, spent most of the day assailing the qualifications as a witness of Dr. David N. Kendall, head of the Kendall Infra-Red Laboratories, Plainfield, N. J. That attack started Monday.

#### Counsel in Clashes

Long intervals of wrangling between counsel as to what of Dr. Kendall's testimony was admissible kept him on the stand from morning to evening.

When the scientist did have an opportunity to speak, under questioning of Attorney James E. McLaughlin, Mr. McArdle's assistant, he launched dissertations on chemistry that left the jurors' faces blank and Judge Miller in deep concentration.

When Dr. Kendall drew conclusions about the cancer-producing qualities of hydrocarbons in cigarette smoke, Mr. Haas won his objection that the witness was not qualified to testify to that extent.

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